

Sun Inn, Inc., d/b/a San Antonio Inn and Deborah Ousley. Case 14-CA-14431

May 5, 1981

DECISION AND ORDER

Upon a charge filed on November 12, and amended charges filed on December 16 and 24, 1980, by Deborah Ousley, herein called the Charging Party, and duly served on Sun Inn, Inc., d/b/a San Antonio Inn, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint and notice of hearing on December 24, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charges, and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

With respect to the unfair labor practices, the complaint alleges in substance that on or about July 14, 1980, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act by coercive acts and conduct, including discharging employee Deborah Ousley because she filed a workmen's compensation claim.

On January 23, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 29, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to Notice To Show Cause and, accordingly, the allegations in the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge in which case the respondent shall so state, such statement operating as a denial.

All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent by certified mail on or about December 24, 1980, and received by Respondent on December 26, 1980, specifically states that, if an answer to the complaint is not filed within 10 days from the service thereof, "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, in certified letters mailed to Respondent on January 14 and 16, 1981, Respondent was advised by counsel for the General Counsel that an answer to the complaint had not been received, and that summary judgment would be sought unless an answer was duly filed. Respondent refused to accept delivery of the January 16, 1981, letter. As noted above, Respondent has not filed an answer to the complaint, nor responded to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Sun Inn, Inc., d/b/a San Antonio Inn is, and has been at all times material herein, a Missouri corporation with its principal office and place of business at 4625 N. Lindberg in the city of Hazelwood, county of St. Louis, and State of Missouri, herein called its facility. Respondent is, and has been at all times material herein, engaged in the motel business. During the 12 months preceding the issuance of the complaint, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and purchased and caused to be transported and delivered at its Hazelwood, Missouri, facility materials or supplies valued in excess of \$5,000, of which materials or services valued in excess of \$5,000 were transported and delivered to its Hazelwood, Missouri, facility directly from points outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE UNFAIR LABOR PRACTICES

At all times material herein, the following named persons occupied the positions indicated, and have been, and are now, supervisors and agents of Respondent within the meaning of Section 2(11) of the Act: John Stephan, general manager (April 1979 to the present); John E. Faller, housekeeping supervisor (September 1979 to September 1980); and Bobby D. Coil, housekeeping supervisor (June 1979 to March 1980 and May 1980 to the present).

On or about May 15, 1980, Respondent's agent, then Housekeeping Supervisor Faller, informed employees that he had been told, and that he intended, to discharge Charging Party Deborah Ousley because she filed a workmen's compensation suit.

Sometime during the month of June 1980, Respondent, acting through Housekeeping Supervisor Coil, threatened employees with reprisal if they filed suits against Respondent, and informed employees of General Manager Stephan's desire to discharge the Charging Party because she filed a workmen's compensation suit.

On or about July 14, 1980, Respondent, acting through Housekeeping Supervisor Coil, discharged the Charging Party because she engaged in protected concerted activities and, continuing to date, has failed and refused to reinstate the Charging Party to her former position of employment or to a substantially equivalent position of employment.

Accordingly, we find that, by the aforesaid acts and conduct, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and ob-

structing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent discriminatorily discharged employee Deborah Ousley, we shall order Respondent to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges previously enjoyed, and to make her whole for any loss of earnings she may have suffered due to the discrimination practiced against her by payment to her of a sum of money equal to the amount she normally would have earned as wages from the date of her discharge to the date of Respondent's offer of reinstatement, less net interim earnings. Backpay is to be computed in the manner set forth *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner described in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Sun Inn, Inc., d/b/a San Antonio Inn, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. John Stephan, John E. Faller, and Bobby D. Coil were or are supervisors and agents of Respondent within the meaning of Section 2(11) of the Act.

3. By the acts and conduct described in section III, above, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sun Inn, Inc., d/b/a Antonio Inn, Hazelwood, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with reprisals if they file workmen's compensation suits against Respondent.

(b) Attempting to prohibit its employees from filing workmen's compensation suits against Respondent by threatening discharge if they file such suits.

(c) Discharging or otherwise discriminating in regard to hire or tenure of employment of any of its employees because they filed a workmen's compensation suit against Respondent or otherwise engaged in concerted protected activities for their mutual aid and protection.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Deborah Ousley immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay she may have suffered by reason of the discrimination practiced against her in the manner set forth in the section herein entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amount of backpay due under the terms of this Order.

(c) Post at its Hazelwood, Missouri, facility copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Relations Board."

Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten our employees with reprisals if they file workmen's compensation suits against us.

WE WILL NOT attempt to prohibit our employees from filing workmen's compensation suits against us by threatening them with discharge if they filed such suits.

WE WILL NOT discharge or otherwise discriminate in regard to hire or tenure of employment of any of our employees because they filed a workmen's compensation suit against us or otherwise engaged in protected concerted activities for their mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL offer Deborah Ousley immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay she may have suffered by reason of the discrimination practiced against her, with interest.

SUN INN, INC., D/B/A SAN ANTONIO
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